

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHUONG DUC DO and DEPARTMENT OF THE NAVY,
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 99-2540; Submitted on the Record;
Issued February 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on March 14, 1997 causally related to his October 12, 1993 employment injury.

On October 18, 1993 appellant, then a 38-year-old electrical engineer, filed a traumatic injury claim (Form CA-1) alleging that on October 12, 1993 he sustained employment-related head and neck contusions and cervical and lumbar strains. Appellant stopped work on October 12, 1993 and returned to work on or around January 18, 1994. He worked sporadically thereafter. The Office of Workers' Compensation Programs accepted appellant's claim for head and neck contusions and cervical and lumbar sprains.

On April 7, 1998 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on March 14, 1997 he sustained worsening back pain radiating to his heel and toe causally related to his October 12, 1993 employment injury. Appellant alleged that he could not bend to change his clothes or sit with his back straight and used a cane for ambulation. On the reverse side of the claim form, appellant's supervisor stated that following his October 12, 1993 employment injury, appellant did not request accommodations or inform the employing establishment that he was disabled. Appellant stopped work on March 14, 1997.

To support his claim, appellant submitted a February 19, 1998 report, in which Dr. Peter A. Ahles, a general practitioner, provided a history of appellant's October 14, 1993 employment injury and diagnosed chronic thoracic, and lumbar sprain and strain.¹ He noted that a current x-ray and July 18, 1997 computerized tomography (CT) scan revealed five millimeter L5-S1 posterior disc bulging. Dr. Ahles stated that appellant would be permanently disabled until July 19, 1998.

¹ The Board notes that Dr. Ahles' report referred to appellant's "October 14, 1993" employment injury and will assume that Dr. Ahles intended to refer to appellant's October 12, 1993 employment injury.

Appellant also submitted an attending physician's report (Form CA-20) dated April 7, 1998, in which Dr. Ahles noted that appellant's July 18, 1997 CT scan revealed L5-S1 posterior disc bulging. He diagnosed chronic lumbar and thoracic sprain and strain and indicated by check mark that he believed appellant's condition was caused or aggravated by an employment activity. Dr. Ahles stated: "An initial relief of symptoms followed by a reoccurrence of pain is common in injuries of this nature. Strenuous physical activity aggravated." He noted that he first examined appellant on March 14, 1997 and that monthly treatment continued through March 17, 1998. Dr. Ahles remarked that appellant's prognosis was guarded for the foreseeable future.

Appellant further submitted a duty status report (Form CA-17) dated April 7, 1998, in which Dr. Ahles noted five millimeter L5-S1 posterior disc bulging, diagnosed lumbar disc sprain and totally restricted appellant from work. A letter from Dr. Ahles dated April 30, 1998, stated that appellant's October 12, 1998 employment injury was aggravated by his work and he was unable to continue working. He noted that he experienced low back, thoracolumbar, and lumbar pain, muscle spasm, fatigue, tension, loss of sleep and migraine headaches.

Additionally, appellant submitted an undated note from Dr. Richard A. Hochberg, a Board-certified psychiatrist, stating that appellant was disabled from February 1 to March 1, 1998.

By decision dated July 17, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that his alleged recurrence of disability was causally related to his October 12, 1993 employment injury. The Office found that Dr. Ahles' February 19, 1998 report was "unacceptable" because the x-ray to which he referred, which was taken soon after appellant's October 12, 1993 employment injury, showed no acute injury or disc bulging and, therefore, "the appearance of disc bulging over three years later cannot be accepted as a result of the [October 12, 1993 employment injury]." The Office also found Dr. Ahles' report unacceptable because the employing establishment alleged that appellant did not have, nor did he request, duty restrictions.

By letter dated July 23, 1998, appellant, through his attorney, requested a hearing before an Office hearing representative. A hearing was held on May 12, 1999. Appellant described his October 12, 1993 employment injury and testified his resulting pain was constant. He also testified that prior to his October 12, 1993 injury he never experienced low back, mid-back, or neck pain and he did not sustain any injuries or serious illnesses following his employment injury. Appellant stated that he had not worked since March 1997. He discussed his diagnostic procedures including x-rays and CT scans. Appellant stated that when he returned to work in 1994, Dr. Ahles restricted him to light-duty work but his assignment was more physically demanding than his regular work. He also stated that his alleged recurrence involved the "exact same area" of his back as his October 12, 1993 employment injury. Appellant described his job duties and stated that he sustained daily aggravations of his back condition caused by those duties. He further stated that his back pain slowly worsened and resulted in his alleged March 1997 recurrence of disability. The record remained open for 30 days.

Appellant submitted a report dated January 21, 1999, in which Dr. Ahles provided a history of appellant's October 12, 1993 employment injury, medical history and examination

findings. He diagnosed chronic thoracic and lumbar strain and sprain. Dr. Ahles noted that a current x-ray and July 18, 1997 CT scan showed five millimeter L5-S1 posterior disc bulging. He stated that appellant also sustained spinal cord and nervous system damage in the low back, thigh, and left ankle causing chronic pain, numbness and muscle atrophy. Dr. Ahles also stated that appellant's case was guarded because strenuous activity would aggravate and accelerate his injury. He recommended that appellant not work until April 20, 1999.

In his February 19, 1998 report, Dr. Ahles restated his diagnoses and noted that appellant would be disabled from work until July 19, 1998. In a report dated August 10, 1995, he diagnosed depression and chronic cervical strain with myofascitis. Dr. Ahles stated that following appellant's October 12, 1993 employment injury, he worked from January 18 to February 24, 1994 but was unable to continue because of the severity of his symptoms. He stated that appellant's low-back syndrome persisted from February 24 to May 10, 1994 and he was completely disabled. Appellant submitted an undated form report from Dr. Ahles noting his symptoms and treatment.

Appellant also submitted an October 1, 1997 report, in which Dr. Barry Lew, a physician specializing in obstetrics and gynecology, provided a history of appellant's October 12, 1993 employment injury, prior medical history and course of treatment. Dr. Lew diagnosed chronic thoracic and lumbar sprain and strain as well as L5-S1 posterior disc bulging. He restricted appellant from returning to work until February 1, 1998.

Appellant further submitted a July 18, 1997 lumbar spine CT scan, in which Dr. Thanh G. Phung, a Board-certified diagnostic radiologist, diagnosed L5-S1 posterior disc bulging. Dr. Phung stated that the bulging disc bilaterally impinged upon the neural foramina and he noted the absence of L3-4 and L4-5 disc herniation.

Additionally, appellant submitted progress notes, prescriptions and laboratory test results dated March 24, 1997 to May 11, 1999. A March 24, 1997 abdominal ultrasound report from Dr. Lawrence W. Chespak, a Board-certified diagnostic radiologist, revealed a small right renal calculus and normal evaluation of the abdominal aorta.

By decision dated July 26, 1999, the hearing representative affirmed the Office's July 17, 1998 decision on the grounds that the medical evidence of record failed to show that appellant's alleged recurrence of disability was causally related to his October 12, 1993 employment injury. The hearing representative found that the medical evidence did not explain whether appellant's disc bulge or back strain were related to his accepted employment injury. The hearing examiner questioned whether appellant had back problems prior to his employment injury and whether he fell 20 feet from a ladder.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on March 14, 1997 causally related to his October 12, 1993 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish

by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.² The claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.³ Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁴ In this regard, medical evidence of bridging symptoms between the alleged recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁵

In this case, appellant has not shown a change in the nature and extent of his light-duty job requirements, nor has he submitted sufficient medical evidence to show a change in the nature and extent of his employment-related condition. The medical evidence of record does not contain a rationalized medical opinion explaining how and why appellant's back condition was caused, precipitated, accelerated, or aggravated by his October 12, 1993 employment injury. In his August 10, 1995 report, Dr. Ahles diagnosed chronic cervical strain with myofascitis and opined that appellant was unable to work because of the severity of his symptoms, but he did not render an opinion stating how appellant's alleged recurrence related to his accepted employment injury. The record contains no other medical evidence that would connect the period from appellant's October 12, 1993 employment injury to March 14, 1997, the date of his alleged recurrence of disability.

In his other reports, Dr. Ahles diagnosed chronic lumbar and thoracic sprain and strain and discussed appellant's October 12, 1993 employment injury but did not address the issue of whether his alleged recurrence was causally related to his employment injury. In a report dated April 7, 1998, he indicated by checkmark that he believed appellant's condition was caused or aggravated by employment. Dr. Ahles stated that an initial relief of symptoms followed by a recurrence of pain is common and that strenuous physical activity aggravated appellant's condition but he did not specifically address the relationship between appellant's condition and his employment-related injury. When a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a claim.⁶

Similarly, Dr. Ahles' April 30, 1998 letter, stated that appellant's October 12, 1998 employment injury was aggravated by his work but he did not support his conclusion with rationalized opinion evidence.

² *Glenn Robertson*, 48 ECAB 344, 352 (1997); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁵ *Leslie S. Pope*, 37 ECAB 798, 802 (1986).

⁶ *Lee R. Haywood*, 48 ECAB 145, 147 (1996).

Dr. Lew's report also failed to explain how and why appellant's diagnosed condition related to his employment-related injury.

Accordingly, as appellant did not submit rationalized medical opinion evidence explaining how and why his condition was related to his October 12, 1993 employment injury, he has not met his burden of proof to establish that he sustained a recurrence of disability.

The decision of the Office of Workers Compensation Programs dated July 26, 1999 is hereby affirmed.

Dated, Washington, DC
February 23, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member